

DOCKET NO. D-1972-146-2

DELAWARE RIVER BASIN COMMISSION

Special Protection Waters

Saputo Dairy Foods USA, LLC

Groundwater Withdrawal

Town of Delhi, Delaware County, New York

PROCEEDINGS

This docket is issued in response to an Application submitted by Saputo Dairy Foods USA, LLC to the Delaware River Basin Commission (DRBC or Commission) on July 31, 2015 for renewal of an allocation of groundwater and review of a groundwater water withdrawal project (Application). The project was approved by the Commission on November 8, 1972 via Docket No. D-72-146 issued to Deltown Foods, Incorporated, a previous owner of the facility.

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Delaware County Planning Department has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on August 10, 2016.

A. DESCRIPTION

1. **Purpose.** The purpose of this project is to approve the renewal of an existing groundwater withdrawal from Wells Nos. 1, 2, 3 and 4 for continued use at the docket holder's existing dairy processing manufacturing facility. The total combined allocation of groundwater will remain 29 million gallons per month.
2. **Location.** The project wells are completed in unconsolidated sand and gravel in the West Branch Delaware River Watershed in the Town of Delhi, Delaware County, New York. The project is located within the drainage area to the section of the non-tidal Delaware River known as the Upper Delaware that is designated as Special Protection Waters (SPW). The West Branch Delaware River at the project site is classified by NYSDEC as a Class C(t) waterbody. Specific location information has been withheld for security reasons.
3. **Area Served.** The four (4) existing wells will continue to serve the docket holder's dairy processing manufacturing facility. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. **Physical features.**

a. **Design criteria.** The Docket Holder produces aerosol whipped cream toppings, flavored milks and cooking creams at the facility. Groundwater is used for non-contact cooling purposes, incorporation into products, used in evaporative condensers and for potable purposes and general cleaning of the plant. The facility has an existing average and maximum daily water demand of 0.685 million gallons and 0.994 million gallons, respectively. Based on withdrawal reports, monthly withdrawals range from approximately 16 mgm to 26 mgm. The docket holder indicated that the current allocation of 29 million gallons per month is adequate to meet the future demands of the facility.

b. **Facilities.** The existing project wells have the following characteristics:

WELL NO.	DEPTH	CASED DEPTH/ CASING DIAMETER	PUMP CAPACITY	YEAR DRILLED
1	68	Unknown / 10"	440 gpm	After 1961
2	72	Unknown / 10"	475 gpm	After 1961
3	77	Unknown / 10"	420 gpm	After 1961
4	81	Unknown / unknown	620 gpm	unknown

The wells are not directly metered. Chart recorders are used to measure the NCCW discharge and the volume of wastewater conveyed to the Village of Delhi WWTP and the volume of water used as an ingredient in product is metered.

Prior to entering the distribution system, the water is chlorinated.

The project wells are outside the 100-year floodplain.

The water system is not presently interconnected with any other distribution system.

c. **Other.** Sanitary and plant process wastewater is conveyed to the Village of Delhi wastewater treatment plant (WWTP) most recently approved by DRBC Docket No. D-2001-033 CP-3 on July 10, 2013, modified and reissued on March 3, 2010 as Docket No. D-2001-033 CP-4. The NYSDEC issued its most recent SPDES Permit No. NY0020265 on April 5, 2013 for the Village of Delhi treatment facility. The treatment facility has adequate capacity to continue receive wastewater from the existing project. The sanitary and plant process wastewater is no longer disposed onsite as described in the previous docket.

Non-contact cooling water (NCCW) from the facility is discharged to the West Branch Delaware River at the project site. The NCCW discharge was most recently approved by DRBC Docket No. D-70-177 (Revised) on December 12, 1972. The NYSDEC issued its most recent SPDES Permit No. NY0068292 on May 27, 2015, effective August 1, 2015. Condition C.II.r.

requires that the docket holder submit an application for the transfer of ownership of Docket No. D-70-177 (Revised).

- d. Cost.** There are no construction costs associated with this renewal project.

B. FINDINGS

Special Protection Waters

In 1992, the DRBC adopted Special Protection Waters requirements, as part of the DRBC *Water Quality Regulations* (WQR), designed to protect existing high water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap were classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

On July 16, 2008, the DRBC approved amendments to its *Water Quality Regulations* that provide increased protection for waters that the Commission classifies as Special Protection Waters. The portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area was approved for Special Protection Waters designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1). and 2). of the *Water Quality Regulations, Administrative Manual - Part III*, states that projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the docket holder's service area which is also located within the drainage area of Special Protection Waters unless the project is located above one of the impoundments designated in Section 3.10.3A.2.g.5 of the WQR.

The Saputo facility is located above the Cannonsville Reservoir (a listed impoundment in Section 3.10.3A.2.g.5 of the Commission's WQR). Therefore, a NPSPCP is not required for this facility.

Based on location information contained the original 1972 application materials, Well No. 4 described in this docket is not the Well No. 4 described in the previous docket. The docket holder's Wells Nos. 1, 2, 3 and 4 are now located in close proximity to one another.

Withdrawals are not directly metered. However, water usage is metered at two locations within the facility. One chart recorder measures the amount of water discharged through the

plant's NCCW system. Wastewater from plant processes and sanitary wastewater is metered prior to its conveyance to the Village of Delhi WWTP. Water that is incorporated as an ingredient in the product is also estimated based on production volume. The docket holder is required to install and begin metering its groundwater withdrawals. Because the wells are located near one another and are screened in a sand and gravel aquifer, a single meter that measures the combined groundwater withdrawals is considered adequate at this time. Condition C.II.f. requires the docket holder to install the meter and begin measuring the total groundwater withdrawals within 12 months of the approval date of this docket (September 14, 2017).

The previous groundwater withdrawal and non-contact cooling water discharge dockets were issued to Deltown Foods, Incorporated. Since then the facility has changed ownership, but the dockets were never transferred. The transfer of this docket to the docket holder will occur upon the approval of this docket by the Commission. The NCCW discharge docket must be transferred to the Docket Holder. The discharge project is then subject to the one process one permit program led by NYSDEC under the conditions of the Administrative Agreement between the DRBC and NYSDEC. The docket holder shall apply to the Commission for the transfer of Docket No. D-70-177 (Revised) within 30 days of the approval date of this docket (October 14, 2016) (See Condition C.II.r.).

This project consists of an existing withdrawal of groundwater from Well Nos. 1, 2, 3 and 4. The docket holder has requested individual well allocations based on existing pump capacities and a total combined allocation of 29 mgm, which was previously approved by the Commission. These rates are provided in Decision Condition II.d. in the Decision Section of this docket. As the existing water withdrawals have already been realized by the local hydrologic system, no significant impacts from continued withdrawals from the existing system wells are expected.

The docket holder is currently installing a glycol loop cooling tower and reports that it will significantly reduce the amount of NCCW needed. The docket holder requested that the current allocation not be reduced at this time in order to allow for potential production increases in the future. Staff will evaluate the water needs of the facility and make any necessary adjustments to the allocation upon the renewal of this docket.

Based on data reported to NYSDEC in its 2014 Water Withdrawal Reporting Form, the project withdrawals result in an average consumptive use of approximately 0.5 percent of the total water use. The DRBC definition of consumptive use is defined in Article 5.5.1.D of the *Administrative Manual – Part III – Basin Regulations – Water Supply Charges*.

The project is designed to conform to the requirements of the *Water Code* and *Water Quality Regulations* of the DRBC.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

C. DECISION

I. Effective on the approval date for Docket No. D-1972-146-2 below, Docket No. D-72-146 is terminated and replaced by Docket No. D-1972-146-2.

II. The project and appurtenant facilities as described in the Section A “Physical features” are approved pursuant to Section 3.8 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the NYSDEC and NYSDOH, and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission’s. The docket holder shall also satisfy annual withdrawal, capacity and conservation reporting requirements in the form and manner prescribed by NYSDEC’s Division of Water in accordance with NYCRR Part 601.5(a).

b. The wells and operational records shall be available at all times for inspection by the DRBC.

c. The wells shall be operated at all times to comply with the requirements of the *Water Code* and *Water Quality Regulations* of the DRBC.

d. During any month, the combined withdrawal from all well sources shall not exceed 29.0 million gallons. No well shall be pumped above the maximum instantaneous rate and monthly allocation as indicated below:

WELL NO.	MAXIMUM INSTANTANEOUS RATE	MONTHLY ALLOCATION
1	440 gpm	19.64
2	475 gpm	21.20
3	420 gpm	18.75
4	620 gpm	27.68

e. The wells shall be equipped, where possible, with readily accessible capped ports and minimum ½ inch inner diameter (ID) drop pipes as repairs or modifications are made at each existing well so that water levels may be measured under all conditions.

f. The project withdrawals shall be metered with an automatic continuous recording device that measures to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted if maintenance of the 5 percent performance is not technically feasible or economically practicable. A record of biweekly withdrawals shall be maintained, and monthly totals shall be reported to the NYSDEC annually and shall be available at any time to the Commission if requested by the Executive

Director. The docket holder shall install the meter and begin measuring the total groundwater withdrawals within 12 months of the approval date of this docket (September 14, 2017).

g. No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).

h. Sound practices of excavation, backfill and reseeding shall be followed to minimize erosion and deposition of sediment in streams from any new facilities or repair related construction.

i. No new water service connections shall be made to premises connected to sewerage systems which are not in compliance with all applicable effluent limits contained in State permits and the *Water Quality Regulations* of the Commission.

j. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

k. The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.

l. Unless the docket holder requests an extension and that is approved by the Commission in advance, in accordance with paragraph 11 of the Commission's Project Review Fee schedule (Resolution No. 2009-2), the docket holder is responsible for timely submittal of a docket renewal application on the appropriate DRBC application form at least 12 months in advance of the docket expiration date set forth below. The docket holder will be subject to late charges in the event of untimely submittal of its renewal application, whether or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below (or the later date established by an extension that has been timely requested and approved), the terms and conditions of the current docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

m. The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder in order to insure the proper control, use and management of the water resources of the Basin.

n. If the monitoring required herein or any other relevant data or information demonstrates that the operation of this project is interfering with or otherwise impairing existing uses of ground or surface water, or if the permit holder receives a complaint from an existing ground or surface water user within the zone of influence of the withdrawal alleging such

interference or impairment, the permit holder shall immediately notify the Executive Director, and unless excused by the Executive Director, shall investigate the demonstrated or alleged impacts. For purposes of this condition, notification shall mean either (a) electronic transmittal of written notice to the Executive Director via email (using addresses posted on the DRBC website); or (b) written notice to the Executive Director and a telephone call to the Project Review Section at 609-883-9500, ext. 216. (Oral notification must always be accompanied by immediate written notification directed to the Executive Director.) In addition, the permit holder shall provide written notice to all potentially affected water users of the permit holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the permit holder's project withdrawal shall be repaired, replaced or mitigated at the permit holder's expense.** The scope of the options to consider for repair, replacement and/or mitigation shall not be limited solely to those that are owned, operated, or controlled by the project sponsor. An investigation report and/or mitigation plan prepared and certified by a licensed professional engineer and/or a licensed professional geologist shall be submitted to the Executive Director as soon as practicable following notice of the demonstrated or alleged impairment consistent with this paragraph. The Executive Director shall make the final determination regarding the scope and sufficiency of the investigation and the extent of any mitigation measures that may be required. Where ground and surface waters are rendered unavailable, unusable, or unsuitable for the pre-existing use, the Executive Director may direct the permit holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation.

o. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

p. For the duration of any drought emergency declared by either New York or the Commission, water service or use by the docket holder pursuant to this approval shall be subject to the prohibition of those nonessential uses specified by the Governor of New York to the extent that they may be applicable, and to any other emergency resolutions or orders adopted hereafter by the Commission.

q. Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the *Rules of Practice and Procedure*. In accordance with Section 15.1(p) of the Delaware River Basin Compact, cases and controversies arising under the Compact are reviewable in the United States district courts.

r. The docket holder shall submit an application for the transfer of ownership of Docket No. D-70-177 (Revised) for its NCCW discharge within 30 days of issuance of this docket (October 14, 2016).

BY THE COMMISSION

APPROVAL DATE: September 14, 2016

EXPIRATION DATE: September 14, 2026